

EXHIBIT Y

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION
4 JAMES JIRAK and ROBERT)
5 PEDERSEN,)
6 Plaintiffs,)
7 vs.) No. 07 C 3626
8 ABBOTT LABORATORIES, INC.,)
9 Defendants.)

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11 The deposition of REBECCA OUDAL, called
12 for examination, taken pursuant to the Federal Rules
13 of Civil Procedure of the United States District
14 Courts pertaining to the taking of depositions, taken
15 before Lynn A. McCauley, CSR No. 84-003268, RPR, a
16 Certified Shorthand Reporter of the State of
17 Illinois, at 77 West Wacker Drive, Suite 3500,
18 Chicago, Illinois, on August 27, 2009 at 1:31 p.m.

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1 PRESENT:

2 JOSEPH & HERZFELD, LLP, by
3 MR. MICHAEL DI CHIARA
4 757 Third Avenue, 25th Floor
5 New York, New York 10017
6 212-688-5640
7 md@jhllp.com
8 Appeared on behalf of Plaintiffs;

9
10 and

11 JONES DAY, by
12 MR. BRENT D. KNIGHT
13 77 West Wacker Drive, 35th Floor
14 Chicago, Illinois 60601
15 312-782-3939
16 bknight@jonesday.com
17 Appeared on behalf of Defendant.

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1 Humira also treats psoriatic arthritis and psoriasis.

2 Q. So those reps are paid -- their bonus is
3 paid on the commission which is based on the number
4 of prescriptions written?

5 A. Correct. Number of prescriptions written
6 over a baseline.

7 Q. Okay. Now, is that the number -- is it
8 based on the number of prescriptions written or the
9 number of prescriptions filled?

10 A. Number of prescriptions filled. It's
11 what we can measure, so it's only what goes through a
12 pharmacy.

13 Q. So if a prescription is written but not
14 filled, the rep doesn't get a commission on that?

15 A. No. Nobody would even know that
16 happened.

17 Q. Okay. Now, what other types of -- you
18 said there was commission, and there was a couple
19 other things that you --

20 A. There's a -- there's a method called
21 stack rank.

22 Q. What's that?

23 A. Stack rank is simply where you would rank
24 one representative against other, so if you've got 10

1 correct?

2 A. No, but that's just part of the -- that's
3 expected. I mean that's just -- that's the way sales
4 are.

5 I mean it's kind of -- even when I
6 was a sales rep, there's going to be 30 percent of
7 the business that's going to happen no matter what
8 that has nothing to do with me, and you're going to
9 get credit for it.

10 Q. Okay.

11 A. And there's going to be 30 percent of the
12 business that no matter what I do they probably won't
13 buy my product.

14 Q. Okay.

15 A. Then there's that 40 percent -- and those
16 numbers are soft. I don't have any data to show
17 those numbers.

18 Q. Sure.

19 A. But there are physicians who are
20 influenceable.

21 That direct-to-consumer advertising
22 is going to happen whether or not the rep is there.

23 Q. Right.

24 A. The rep's job is to increase the sales or

1 Q. So if I understand correctly then,
2 there's no way for Abbott to track each prescription
3 to a specific rep?

4 A. No, and it's not necessary. I mean you
5 can track it to a zip code.

6 Q. Sure.

7 A. And the rep will get credit for it.
8 Whether the rep generated it or not is a different
9 story.

10 Q. So if a -- say two reps calling on the
11 same doctors, one is not as hard working say as --
12 gets up at 10:00, you know, starts his day at 11:00,
13 goes home at 4:00, and the other one is out in the
14 field between 9:00 to 5:00, they're still both going
15 to get credit for the prescriptions of their product
16 within that territory?

17 A. Correct.

18 Now, they may have a different
19 weight so let me -- here's an example of where the
20 incentive plans are customized.

21 If you've got two reps in the same
22 territory, they're usually two different sales
23 forces, so let's just say you've got sales force one
24 and sales force two, and they both sell TriCor, and

1 they may also sell Niaspan.

2 Well, for sales force one TriCor
3 might be 75 percent of their total bonus and Niaspan
4 might be 25 percent. Where sales force two it might
5 be the other way around, TriCor is only 25 percent
6 and Niaspan is 75 percent, so it might be that -- you
7 know so one rep may get more credit -- if that doctor
8 wrote TriCor, then sales force one is getting more
9 credit for it in a sense because they're incentive
10 weight on TriCor is higher than sales force two, but
11 they both get credit for one script, yes.

12 Q. Okay. Now, if a product is equally
13 weighted for both reps calling on the same physician,
14 and one works harder than the other, they're still
15 going to both get credit for that, all those scripts
16 in that territory?

17 A. Yep.

18 Q. Now, what if you have one rep that, you
19 know, is working harder, you know, using the detailed
20 pieces, you know, delivering the messages and, you
21 know, really trying to find a way to connect with the
22 doctor; and the other rep, you know, doesn't even
23 talk about any of the attributes of the product but
24 happens to have gone to the same college as the

1 doctor, and that doctors loves his alma mater, so
2 he's going to help anyone who went there, and so the
3 doctor writes prescriptions because -- we'll call it
4 the lazy rep -- just happened to go to the same
5 school, and he hates -- for whatever reason -- the
6 really diligent hard-working rep.

7 That hard-working rep would get
8 credit as well for those prescriptions even though
9 the doctor is writing the script absolutely for no
10 reason related to that hard-working rep; is that
11 correct?

12 A. That's correct.

13 Q. Okay.

14 A. Yep.

15 But it's whatever is the way to make
16 the horse thirsty, so you know, the phrase you can
17 lead a horse to water, but you can't make them drink,
18 so a lot of people think that a sales rep job is to
19 lead the horse to water, and everyone knows you can't
20 make the horse drink, short of oration, right, but
21 that's really not what the job of the rep is.

22 The job of the rep is to make the
23 horse thirsty, and so then the horse drinking is the
24 natural outcome of the rep having done their job

1 Q. Do you know which products have generic
2 versions?

3 A. So Synthroid, for example, has a generic.
4 All of the them pretty much. There's several generic
5 compounds for Synthroid.

6 Q. What is Synthroid?

7 A. Synthroid treats hypothyroidism. It's an
8 underactive metabolism, underactive thyroid.

9 TriCor, not really. I mean there
10 are some other drugs similar to TriCor that are
11 generic.

12 Depakote has some generic
13 competition. The fact is Depakote had a generic
14 competition years ago, and then even the more recent
15 formulations now have generic competition.

16 Q. So if a patient takes a script for
17 Synthroid and goes to the pharmacy and it's filled
18 with a generic, does a rep in that territory get
19 credit for that script?

20 A. No.

21 Q. And same with Depakote, if a doctor
22 writes a prescription for Depakote and a patient goes
23 to get it filled and it's filled with a generic
24 substitute for Depakote, does a rep get credit for

1 of measuring -- if a doctor calls it into the
2 pharmacy, the physician never comes and fills it,
3 then maybe you could measure that. I'm not aware of
4 anybody ever trying to measure that.

5 Q. So a rep could be in a territory and for
6 whatever reason patients aren't getting their scripts
7 filled and being deprived of their bonus because
8 they're doing their job, they're convincing the
9 doctor, but the script is not being filled by the
10 patient.

11 A. That's possible, yes.

12 That's where sometimes, too, a good
13 rep, though -- again, it's a question of why the
14 patient isn't filling the prescription.

15 A rep can have some impact on that
16 exchange as well by informing the doctor of either
17 patient's assistance programs in which case, you
18 know, a patient might be able to get help and might
19 be able to get that medication without paying full
20 price.

21 So that's one of the other jobs of
22 the rep is to make sure doctors are aware of that, so
23 that when doctors have the exchange with the patient,
24 they can share that stuff with them.

1 tell you one or the other is important. They would
2 always say it's both important.

3 Q. Now, if for whatever reason Abbott had to
4 chose either frequency or, you know, the length of
5 time with one visit, what would it choose?

6 MR. KNIGHT: Object to the form of the
7 question. Asked and answered.

8 THE WITNESS: I'm sorry?

9 MR. KNIGHT: I just stated an objection for
10 the record.

11 You can answer.

12 THE WITNESS: Oh, okay.

13 BY THE WITNESS:

14 A. My guess is they probably have to lean
15 towards frequency because, again, you need to keep it
16 top of mind, they need to see -- they need to be
17 reminded of it, and a physician can read about any
18 product in the PDR if they want, you know, in gory
19 detail.

20 BY MR. DI CHIARA:

21 Q. I had -- I spoke to an Abbott rep who
22 mentioned that there was an Abbott executive who
23 indicated that -- just to paraphrase -- that a
24 trained monkey could do what a rep does. I take it

1 what's consistent with the label of the product.

2 Q. Sure. Now, you mentioned the IMS data,
3 and it doesn't capture 100 percent of the
4 prescription; is that correct?

5 A. No. It has about -- it captures about 75
6 percent, and then they project for the rest.

7 Q. So as far as incentive compensation, if a
8 rep has -- is in a territory that has pharmacies that
9 do not provide their prescription information to IMS,
10 how is their bonus calculated?

11 A. Well IMS is the one that projects those
12 scripts, so IMS projects for pharmacies that are not
13 included in their data set.

14 So we don't do anything differently.
15 We design our incentives because what we're doing is
16 math and statistics, but whatever data IMS puts into
17 their data set is what's there; and, yes, they
18 project for pharmacies that aren't reporting.

19 Q. Has Abbott done any studies to determine
20 if their projections are accurate to those
21 pharmacies --

22 A. Abbott wouldn't have any way of knowing,
23 but IMS has done a tremendous amount of studies for
24 it, and I believe their accuracy rate is very high.